Testimony of
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on Behalf of the
Association of Oil Pipe Lines (AOPL) and the American Petroleum Institute (API)

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Thank you, Chairwoman Brown, Ranking Member Shuster, and Members of the Subcommittee. I am Stephen Falgoust of Plains All American Pipeline LP (Plains), representing both the Association of Oil Pipe Lines (AOPL) and the American Petroleum Institute (API). We appreciate the opportunity to participate in this hearing.

I am Director, Asset Integrity for Plains, and I have over 20 years experience in pipelines and petroleum transportation. My experience is in regulatory compliance and, to a greater extent, asset integrity. Plains is a publicly traded master limited partnership engaged in the transportation, storage, terminalling and marketing of crude oil, refined products and liquefied petroleum gas and other natural gas related petroleum products. The Partnership is also engaged in the development and operation of natural gas storage facilities. Plains operates in the United States and Canada and its predominant business is transportation and storage of crude oil. Plains operates 16,000 miles of active pipelines with approximately 12,000 miles in the United States. Plains also has approximately 85 million barrels of liquid storage and transports approximately 3 million barrels per day. Plains has approximately 3,400 employees and 120,000 unit holders.

AOPL is an incorporated trade association that represents 51 pipeline companies that transport hazardous liquids in the United States. API is a trade association with about 400 members involved in all aspects of the oil and natural gas industry, including exploration, production, refining, marketing, and transportation. Together our members operate about 85 percent of the hazardous liquids pipeline mileage in this country.

I am pleased to provide an overview of key components of hazardous liquids pipeline safety regulation. A mix of federal and state oversight ensures the safety of our nation's hazardous liquids pipelines. I will first discuss the primary federal safety regulator in the U.S., the Department of Transportation's Office of Pipeline Safety (OPS) within the Pipeline and Hazardous Materials Safety Administration (PHMSA), and then discuss other regulatory oversight of pipelines.

OPS Pipeline Safety Regulation

OPS has built on decades of regulatory experience and data that has led to a comprehensive set of pipeline safety rules. OPS's liquid pipeline safety regulations cover the vast majority of pipelines engaged in transportation of crude oil, petroleum products, and other hazardous liquids, such as carbon dioxide, anhydrous ammonia and ethanol. OPS is charged with inspection and enforcement of pipeline safety regulations over interstate and intrastate pipeline transportation. In many instances, individual states also enforce pipeline safety regulations over intrastate pipeline transportation within their boundaries. Lines not subject to OPS's liquid pipeline safety regulations fall within the purview of state agencies, such as state oil and gas commissions and regional water quality boards, and other federal agencies, such as the Environmental Protection Agency (EPA) and the Department of Homeland Security (DHS).

Pipeline facilities involved in the transportation of liquids or carbon dioxide in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf (OCS), are covered by 49 CFR Part 195.[1] All pipelines subject to Part 195 must meet numerous

[1] OPS also has jurisdiction over gas pipelines through 49 CFR Part 192 and Liquefied Natural Gas (LNG) through 49 CFR Part 193.

requirements, including corrosion control, damage prevention and public awareness, reporting, design standards, construction methods, operational controls and limitations, pressure testing, maintenance standards, qualification of personnel, and emergency response.[2] OPS's safety regulations also apply to related pipeline facilities, such as breakout tanks, valves, meters, pumping units, pressure regulating devices, and other equipment. Operators of liquid pipelines invest millions of dollars annually to maintain their pipelines and comply with federal pipeline safety laws and regulations. Liquid pipeline assets are inspected regularly and monitored continuously, using a combination of complementary practices. Pipeline operators continually seek to reduce the risk of accidental releases by taking measures to minimize the probability and severity of incidents. These measures include proper pipeline route selection, design, construction, operation, and maintenance, as well as comprehensive public awareness and excavation damage prevention programs.

Because of this detailed focus, the frequency of releases from liquid pipelines decreased from 2 incidents per thousand miles in 1999-2001 to 0.7 incidents per thousand miles in 2006-2008, a decline of 63 percent. Similarly, the number of barrels released per 1,000 miles decreased from 629 in 1999-2001 to 330 in 2006-2008, a decline of 48 percent.[3] The industry is proud of this record, but continues to strive for zero releases, zero injuries, zero fatalities and no operational interruptions.

In addition to all of the other provisions of Part 195, pipelines that could affect High Consequence Areas (HCAs) (which include highly populated areas, commercially navigable waterways, and unusually sensitive areas) are subject to the Integrity Management regulations that require operators to develop written Integrity Management Plans (IMPs). Under these plans, pipeline operators perform integrity assessments of the condition of their pipelines regularly, and mitigate features that could reduce pipeline integrity detected by those assessments. This is an extra layer of oversight based on the fact that the consequences of a release are potentially greater if there is impact on such areas. Currently, 44 percent of liquid pipeline miles could affect an HCA.

In addition to the pipeline safety regulations that I just mentioned, OPS reviews spill response plans developed by operators of onshore oil pipelines pursuant to the Oil Pollution Act of 1990.[4] Spill response plans are developed by onshore oil pipelines that, because of location, could cause significant and substantial harm to the environment by discharging oil into or on any navigable waters of the United States or adjoining shorelines. Operators must review their plans at intervals not to exceed five years and change their plans and notify OPS within 30 days if any operational situation arises that would impact response efforts. Pipeline operators are required to conduct emergency response drills on worst-case discharges, and conduct exercises in cooperation with local first responders to ensure that emergency preparedness and planning is at a continued state of readiness. These response drills are conducted under the National Preparedness for Response Plan (PREP) guidelines issued jointly by OPS, the EPA, and the U.S.

[2] See 49 CFR 195 Parts B-H.
[3] These figures are from the Industry's Pipeline Performance Tracking System, a voluntary reporting system that tracks pipeline system spills.
[4] OPA 1990 resulted in comprehensive spill prevention and response planning requirements for onshore pipelines, found at 49 CFR Part 194.

Coast Guard. Our operators are trained on all elements of PREP guidelines and they are required to conduct equipment deployment drills and are subject to random full drills conducted with OPS. Further, any liquids pipeline that could cause substantial harm to waters of the United States, regardless of whether or not it is subject to the Part 195 safety regulations, must have a facility response plan that conforms to the requirements of the Oil Pollution Act of 1990 and regulations issued pursuant to OPA '90.

Non-OPS Regulation

Certain liquids pipelines are regulated by state agencies and federal agencies other than OPS. For example, pipelines that serve oil and gas production facilities within a local producing area, or that traverse between production facilities, like wells and dewatering processing facilities, may be regulated by states, except when they cross federal lands, in which case they are regulated by federal agencies. These include pipelines sometimes referred to as flow lines and production lines. In addition, lines that gather crude oil from producing areas and deliver it to a transportation pipeline may be regulated by states or by other federal land management agencies. However, they are regulated by OPS if they cross non-rural areas, or if they are in rural areas but are 6" or larger in diameter, in or within ¼ mile of an unusually sensitive area, and operate above 20-percent SMYS (specified minimum yield strength). Other gathering lines and the production-related pipelines may be regulated by state agencies as well.

The U.S. Coast Guard has safety oversight of pipelines that service offshore facilities, marine facilities and terminals. Pipelines under U.S. Coast Guard regulation are not regulated by OPS. Also not subject to OPS pipeline safety regulations are offshore pipelines in state waters where the pipeline is located upstream from the outlet flange following the farthest downstream facility. At these facilities, hydrocarbons or carbon dioxide are produced, separated, dehydrated, or otherwise processed. Pipelines that operate on the OCS, upstream (generally seaward) of the last valve on the last production facility, and those operated by producers that cross into state waters without first connecting to a transporting operator's facility on the OCS, are subject to the oversight of the Department of the Interior's Minerals Management Service (MMS). However, these producer-operated lines in federal waters may petition OPS and MMS for approval to operate under OPS regulations, rather than MMS regulations, to simplify compliance. Transportation pipelines that operate on the OCS are subject to OPS regulations, but MMS retains jurisdiction over response plans.

Pipelines operating at or below 20 percent of SMYS that provide connections within and into and out of facilities like distribution, marine, and rail terminals, and refineries, which are less than one mile in length, are also not subject to OPS regulations. These lines, however, may be covered by state regulations. For example, with the exception of crude lines, the California Fire Marshal regulates low-stress intrastate pipelines in California. State regulators also work with the California State Fire Marshal to regulate pipeline safety in marine terminal facilities. Another example would be the stringent state regulations the Washington State Department of Ecology promulgated regarding marine facility pipelines and facilities piping. Generally, within facilities, piping and tanks not subject to the pipeline safety regulations are typically regulated by regional water quality boards or other federal regulations.

Other federal agencies also have significant oversight roles that concern pipeline safety. In addition to Part 194 regulations, the EPA oversees spill preparedness and response from certain pipelines and pipeline storage facilities that could affect marine waters or waters of the United States under the Clean Water Act. The Transportation Safety Administration (TSA) issues guidance to keep pipelines secure from vandalism and terrorism, and the TSA collaborates and coordinates with OPS in regard to security. The DHS Office of Infrastructure Protection, Infrastructure Security Compliance Division oversees chemical security regulations over pipeline storage facilities.

Complementary OPS and State Authorities

Intrastate pipelines are subject to OPS jurisdiction, unless a state agency is federally certified to regulate and inspect intrastate pipelines. Federal law specifically allows states to assume responsibility for enforcing regulations over intrastate pipelines through an annual certification. States may have additional or more stringent requirements in place as well, as long as they are not inconsistent with the federal standards. If a state does not meet the requirements for certification, it can still enter into an agreement with OPS to oversee certain aspects of intrastate pipeline safety, but OPS retains responsibility of enforcement for any violations on intrastate pipelines.

The states with agencies currently certified to inspect intrastate pipelines and enforce regulations are Alabama, Arizona, California, Indiana, Louisiana, Maryland, Minnesota, Mississippi, New York, New Mexico, Oklahoma, Texas, Virginia, Washington, and West Virginia. Agencies in Kentucky and Pennsylvania are authorized to inspect intrastate liquid lines, but OPS retains authority to enforce safety regulations. OPS also certifies certain state agencies to inspect interstate pipelines under delegated authority, while OPS retains enforcement power. Those states are Arizona, California, Minnesota, New York, Virginia, and Washington. To provide you with an idea of the magnitude of the current regulatory environment, in a typical year Plains will experience approximately 150 inspections by various federal, state and local agencies.

States also enforce state damage prevention laws. In the PIPES Act of 2006, Congress granted OPS limited authority to enforce federal damage prevention laws in states which do not have adequate state damage prevention programs. OPS issued an Advanced Notice of Proposed Rulemaking (ANPRM) on October 29, 2009, outlining and collecting input on where and how it might exercise its authority to enforce damage prevention laws in states with inadequate programs. An AOPL and API witness recommended to this committee last month that OPS should move forward on a rule, which includes a minimum requirement that state programs must disallow One-Call exemptions for state agencies, municipalities, and commercial excavators.

Conclusion

In summary, liquids pipelines are subject to comprehensive federal and state oversight with respect to pipeline safety. The industry safety record is admirable, and improving, under the current regulatory regime.

This concludes my testimony and I am happy to answer any questions that members of the committee may have.